



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 16169421

Date: JUL. 12, 2021

**Appeal of Texas Service Center Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a real estate and construction entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating:

My career plan in the United States is to continue my career working as an Entrepreneur, to advise U.S. companies on how to properly plan, start, fund, establish and direct the operations of their new business ventures. By elaborating upon dynamic business channels, using my negotiation skills, and training personnel, I will be able to ensure the success of any company that employs me. I intend to continue using my vast experience and knowledge in many areas to provide expert managerial services to U.S. companies. Moreover, my experience working in industries of national importance, such as business administration and entrepreneurship will allow me to work with U.S. companies looking to capitalize in multiple areas, especially including those doing or planning to do business in [redacted] Latin America, with greater ease.

In response to the Director's request for evidence (RFE), the Petitioner offered an updated statement claiming:

I intend to continue using my expertise and knowledge in the field of Construction, Renovation and Real Estate as an entrepreneur in the United States, specifically focusing on residential buildings, houses, condos and apartments in underserved neighborhood[s] . . . .

. . . .

[M]y overall proposed endeavor in the United States is to offer my expertise as an entrepreneur to establish a company that specializes in construction and real estate. I will do this by continuing to stay-up-to-date on national construction projects, developing and maintaining a network of investors and others in the U.S. to facilitate their entry and participation in construction projects, and implementing key strategic projects aimed at

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<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

developing buildings and houses in underserved area in the United States, which will lead to the generation and accumulation of capital in the U.S. by attracting buyers from all over the world.

....

Currently, I am continuing to work, developing new clients and projects in the U.S. through my [ ] businesses, [ ] Aside from providing construction for real estate businesses, the company will also provide property renovation services. With people's growing interest in buying real estate properties in the United States, a full-service company will render inevitable success and generate immense profit.

The Petitioner maintains on appeal that he: "is willing and able to help combat these serious economic issues – which include helping foreign monetary investment into the U.S. developing real estate in economically depressed areas," "will in fact build multiple homes and apartment buildings for those in need for a broad spectrum of people," and "will be buying materials in the U.S. to build the homes and apartment buildings which will continue to substantially boost the economy." The Director determined that the Petitioner demonstrated the substantial merit of his proposed endeavor, and the record supports that conclusion. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently shown the national importance of his proposed endeavor.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of his providing specific entrepreneurial services in construction, renovation, and real estate rather than the national importance of entrepreneurship or the wide range of fields or industries in which he intends to work. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

In his appeal brief, the Petitioner emphasizes his "extensive expertise," "twenty-seven (27) years of experience," "high level of expertise," and "highly qualified experience and expertise in the real estate development field." The Petitioner's experience and abilities in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner asserts that he "aims to actively apply his construction, renovation, and real estate expertise as an entrepreneur in economically depressed areas in the U.S., particularly for the prevention of homelessness, while safeguarding the nations [*sic*] natural resource initiatives" and "he will enhance

the country's national interests by elevating standards and policies to improve major national concerns, such as the United States' homeless crisis, safeguarding U.S. natural resources, international trade, foreign investment into the U.S., and creating direct and indirect employment for U.S. workers," he has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of his specific proposed endeavor rises to the level of national importance. Instead, the Petitioner submits, and the record contains, evidence regarding general information relating to real estate and the housing market, such as the economic impact of commercial real estate, the real estate's impact on the U.S. economy, real estate sales, profits from real estate investments, and housing market information. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the record does not show how the Petitioner's specific proposed endeavor of providing entrepreneurial services in construction, renovation, and real estate stands to sufficiently extend beyond his own company, to impact the real estate or construction industry or the U.S. economy more broadly at a level commensurate with national importance.

Similarly, the Petitioner asserts that he will invest \$2 million "spread amongst multiple plots of land in underserved areas" and provides an example of a cost breakdown "of an average home [he] intends to build."<sup>4</sup> The Petitioner, however, did not offer any relevant supporting evidence, such as a credible business plan, to corroborate his assertions, including his claim that he "will employ architects, project managers, engineers, draftsman, surveyor/construction workers, tradespeople, and certifiers." Moreover, he did not, for instance, show any credible business revenue projections to substantiate that his company's future business activity stands to provide substantial economic benefits to specific regions or the United States as contemplated by *Dhanasar*, *Id.* at 890.<sup>5</sup> In addition, the Petitioner has not offered evidence, for example, that the unidentified area where his company would build or operate is economically depressed, that he would utilize a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner established that any increases in employment or investment attributable to his company's operations stand to substantially affect economic activity or tax revenue in a state, region, or nationally. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

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<sup>4</sup> The Petitioner statement in response to the Director's RFE claimed that through his [redacted] business "[w]e have also begun working on proposals for a project to convert some neighborhoods in Florida through construction services rendered by the company."

<sup>5</sup> The Petitioner does not identify where there economically depressed or underserved areas would be located in Florida.

**ORDER:** The appeal is dismissed.